

**OCT 18 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

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**UNITED STATES OF AMERICA,****Plaintiff-Appellee,****v.****JUAN M. MONTENEGRO,****Defendant-Appellant.**

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**No. 04-30408****D.C. No. CR-02-00048-BLW****MEMORANDUM\***

**Appeal from the United States District Court  
for the District of Idaho  
B. Lynn Winmill, District Judge, Presiding**

**Submitted October 11, 2005\*\***

**Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.**

Juan M. Montenegro appeals his 87-month sentence imposed after pleading guilty to distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1).

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we remand.

Because appellant was sentenced under the then-mandatory Sentencing

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *Booker* error).

**REMANDED.<sup>1</sup>**

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<sup>1</sup> Appellant's February 11, 2005, motion to supplement appellant's brief is denied as unnecessary.